

## REMARKS

### Background Of Office Action

In the Office Action mailed March 22, 2007, claims 1-58 remain pending and stand rejected as follows:

Claims 49, 50 are rejected as being anticipated under 35 U.S.C. 102(e) in view of U.S. Patent 7,013,461 ("*Hellerstein*").

Claims 1-36 and 41-48 are rejected as being obvious under 35 U.S.C. 103(a) in view of *Hellerstein*.

Claim 47 is rejected under 35 U.S.C. 112 as lacking antecedent basis for "storing the configuration message." Applicant has amended the claim as indicated herein.

### DISCUSSION OF AMENDMENTS

Applicant has amended the specification in response to the Examiner's rejection regarding the statement of the incorporation of reference. Applicant has also amended the related applications to cite related pending applications, and to bring the existence of such to the Examiner's attention.

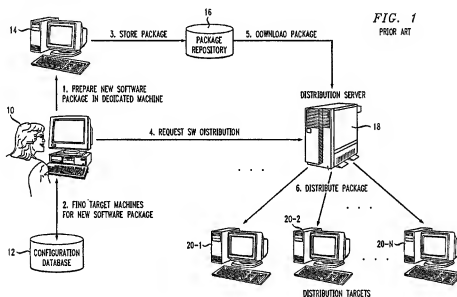
Applicant has amended the claims as discussed below. Although not further discussed, Applicant has amended the claims in response to the Examiner's rejection to the limitation "capable of."

### DISCUSSION OF *HELLERSTEIN*

As the claims are alleged to be anticipated or obvious in light of *Hellerstein*, some preliminary discussion of the disclosure of *Hellerstein* is appropriate. A major aspect of the

discussion focuses on the high level architecture of *Hellerstein*, which is necessary to understand why the application of *Hellerstein* as indicated in the Office Action is inappropriate.

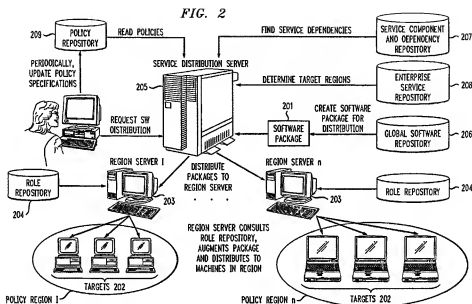
First, it is necessary to appreciate the prior art approach that *Hellerstein* attempts to improve upon. Applicant has replicated Figure 1 from *Hellerstein* below:



*Hellerstein* discloses the prior art approach for distributing software (col. 1, lines 44-62) as involving creating of a software package by an administrator 10, which loads the completed package into the repository 16. At some point in the time the administrator causes the server 18 to obtain/receive the software package from the repository 16. In the last step, the distribution server then transmits the software package to the target machines 20.

It is clear that *Hellerstein* provides what may be termed a “single tier” distribution model. This requires the distribution server to manage the software appropriate for each target system.

Although *Hellerstein* only provides a brief overview of the prior art as disclosed in Figure 1, the Summary of the Invention describes some of the benefits of the *Hellerstein* invention relative to the prior art. Namely, *Hellerstein* discloses a “two-tier” distribution system. Applicant has replicated Figure 2 of *Hellerstein* below:



*Hellerstein* discloses that software package 201 is stored in the global software repository 206 and transferred to the service distribution server (“SDS”) 205. The SDS is able to access various databases defining policy 209, which indicate when/how the software should be distributed. The SDS also consults databases regarding the configuration information for the enterprise 208 and the requirements associated with the software packages (the service component and dependency repository) 207. The SDS then distributes the software to the Region Server (“RS”) as appropriate. The RS then consults a role repository 204 providing guidelines for the distribution of the software package to the targets 202 in the particular region associated with the RS.

Thus, fundamentally, *Hellerstein* defines a two-tier distribution scheme.<sup>1</sup> *Hellerstein* indicates that the “invention provides a methodology to allow decentralized decision making for software distribution...” (Col. 3, lines 2-3). One aspect of this decentralized decision making scheme is that SDS determines which regions should receive a generic software package, and then “the base software package received at each of the candidate regions is customized based on

<sup>1</sup> Note: *Hellerstein* calls this scheme a “three tier system -- (col. 2, lines 48) by including the target machine as a tier. If so, then prior system would be a two-tier system. The distinction of whether it is two or three tier is not significant.

at least one of (i) regional distribution policies, (ii) dependency information specific to one or more roles [e.g., client or server] performed by the target machines in that region, and (iii) individual target machine configuration information.”

To reiterate, the SDS distributes a “base software package” which is then “customized” by the RS, which then distributes the software to each target machine. In *Hellerstein*, the architecture of its invention “allows a better a more scaleable distribution of knowledge regarding enterprise wide (top-down) policies and individual (bottom-up) system requirements.”

Consequently, because *Hellerstein* discloses a multiple-tier distribution system that has advantages over the prior art, *Hellerstein*’s multi-tier architecture is a fundamental aspect of its invention. Tied into this aspect is 1) the software distributed by the SDS is further processed by the RS before it is downloaded into the target, 2) the SDS does not maintain information specific to a target system, but information about a regional system, and 3) the RS maintains information about a particular target system, specifically, the resources present in the target system. *Hellerstein*’s multi-tier distribution system cannot be simply “collapsed” into a single system, nor can the functionality disclosed be “shifted” from one tier to the other. Doing so would destroy the advantages touted by *Hellerstein*.

#### DISCUSSION OF THE CLAIMS REJECTED UNDER 35 U.S.C. 102

Discussion of the claims is provided in the same order as presented in the Office Action.

##### Claim 49

Claim 49 is alleged to be anticipated by *Hellerstein*. Given the prior discussion of *Hellerstein*, there is a fundamental distinction with respect to analogizing the limitations of claim 49 with *Hellerstein*. *Hellerstein* discloses a SDS and RS that each have a role in distributing software to the target system.

In claim 49, there are various elements recited including 1) a data processing system comprising a database that stores host software files with certain other information associated with it, 2) a communication network, and 3) an enhanced services system. One embodiment can be found in Figure 25 of the present application.

The claim limitation further recites that the database is configured to maintain an association of the host software file with 1) a host manufacturer, 2) a specific host model of the host manufacturer, and 3) an enhanced services system. Further, there is an association stored between a certification file and the host software file as well.

The Office Action alleges that the Service Distributions Server (“SDS”) 205 of Figure 2 of *Hellerstein* is equated to the “data processing system.” Immediately, there is a deficiency with respect to *Hellerstein* and the present claim limitation. First, *Hellerstein* has no disclosure of the SDS storing any information about a particular target system itself. *Hellerstein* discloses the SDS maintaining regional information (see, e.g., col. 5, lines 13-23). Further, *Hellerstein* is void of any disclosure of maintaining information about a target’s (e.g., host) manufacturer and model.

The Office Action alleges that the limitation “the host software file further associated with a specific host model of the host manufacturer” is disclosed by the following statement in *Hellerstein*: “A new SP [software package] and its description (e.g., service, role, software name, version, resource pre-requisite list, service pre-requisite list) is entered in the service distribution server.” (Col. 7, line 59-60). The “description” pertains to the software package, not to the target machines onto which it will be downloaded.

To clarify this aspect, the above information pertains to the Component Dependency Repository (207 in Figure 2). *Hellerstein* indicates that this information is maintained at the SDS level (col. 8, line 40), but that it is read and processed by the Regional Servers to ascertain how to customize the software packages before loading them to the target machines (Col. 8, lines 30-40.) Figure 12 also discloses the algorithm executed by the RS (see, e.g., col. 11, lines 5-43). *Hellerstein* states that “[i]t is to be appreciated that the operating system check has to be done at the region level because the SDS is unaware of the operating system details.” (Referring to the operating system details ascertained by an inventory check of the target machine.)

Consequently, *Hellerstein* discloses that the service package stored in the SDS is accompanied by information regarding the package (col. 9, lines 29-31). That collective information (service package and related information) is transmitted to the RS, which uses the

information to ascertain whether the target machine can accept the software package (col. 11, lines 5-43).

The information about the service package corresponds to the section referenced in the Office Action. It is presumed that the particular disclosure alleged to anticipate this limitation in the cited text is the "resource pre-requisite list." *Hellerstein* indicates that pre-requisites include "hardware (e.g., CPU, Memory, Disk), software (e.g., C4 and C5) and service elements (e.g., Transmission Control Protocol (TCP), Domain Name Service (DNS))." (Col. 6, lines 10-14.)

It would be most unusual for the description of the software package to identify particular a particular host type, such as the make and model of the host. *Hellerstein* discloses "resource" pre-requisites of the software package, not a manufacturer host model pre-requisite. A list of resources is not the same as a manufacturer's model. An example can effectively illustrate this: If the list of resources includes: four wheels, automatic transmission, four doors, V-8 engine, leather seats, fuel injection; then what automotive model is indicated? It is not clear what make and model is indicated. Similarly, in the present invention, knowing that a host has a certain processor, a certain memory size, or a certain operating system is often insufficient to determine whether it is appropriate to download software to the host.

Arguably, enough information about the resources of a car can be defined so as to allow the make and model to be determined. However, this involves additional processing and additional data storage. For example, how many cars have four doors? Arguably, a great many do. How many of those cars have V-8 engines? A subset, but still a great many. How many have 15" wheels? A subset thereof. And so on, and so on. Obviously, if enough details are presented, it is possible in theory to define a 'reverse look-up table' is used, then the make and model of the car may be ascertained (provided a set of distinguishing details are included). Obviously, this process is much more complicated than simply conveying the make and model. In practice, this will still not work, because in the computing environment disclosed in *Hellerstein*, it is not uncommon to modify computers to augment memory, add peripherals, etc. However, in an environment where devices are not readily modifiable by a consumer (such as set top boxes), tracking the host by manufacturer and model is practical.

Further, the claim has been clarified to avoid potential confusion regarding interpretation of the limitation “host software file further associated with a specific host model of the host manufacturer” The limitation has been amended to better recite the invention, which is “the database further maintaining an association of the host software file further associated with a specific host model of the host manufacturer.”

The database system maintains the association of which host model is associated with a host software file, which is in distinction from “the host software file further associated with a specific host model of the host manufacturer.”

In summary, the Office Action is analogizing the SDS with the data processing system and the RS with the enhanced services system. If that is the case, the SDS must meet the limitation recited associating host software files with a host manufacturer, a specific host model of the host manufacturer, and storing a certification associated with the host file. *Hellerstein* disclose many things, but it does not disclose that the SDS stores which host files are associated with a given manufacturer, a given host model of the manufacturer, and it does not disclose certification files.

Further, Applicant notes that there is not disclosure in the cited text of *Hellerstein* disclosing “a certification file”, nor any synonymous concept. Thus, this limitation is not disclosed by *Hellerstein* as alleged.

Applicant submits that a rejection under 35 U.S.C. 102 is improper, as not all limitations are taught in the cited prior art reference.

Claim 50

Dependent claim 50 depends from claim 49, and therefore incorporates the limitations of claim 49. Applicant submits that claim 50 is therefore patentable over the prior art by virtue of depending from claim 49.

DISCUSSION OF THE CLAIMS REJECTED UNDER 35 U.S.C. 103

Applicant notes that many claims are alleged to be obvious, but yet the description alleges that the limitations are disclosed by *Hellerstein* creating uncertainty in the Applicant as to whether the rejection is based on 102 or 103.

Claim 1

Claim 1 recites variously recites a “certification entity”, including:

- providing the host software file from the host software manufacturer to a certification entity;
- testing the operation of the host software file by the certification entity;
- certifying the host software file for operation in a host;

The Office Action alleges that these limitations are disclosed by the following statements in *Hellerstein*:

- “Obtain new package.” (col. 9, line 8.)
- “Introduce new software package (SP). Step 601: Introduce new software package (SP). A new SP (201 in FIG. 2) and its description (e.g., service, role, software name, version, resource pre-requisite list, service pre-requisite list) is entered in the service distribution server or SDS (205 in FIG. 2) and stored in the global software repository (206 in FIG. 2).”

The Office Action further states “SDS 205 is certification entity.”



Applicant notes that there is no text in the cited portion disclosing “certification” of the software package, or a “certification entity.” As described in the present invention (specification, page 115 -116),

Typically, the host manufacturer tests the software modules prior to release and/or may submit the modules to a third-party certification entity 903 to perform independent quality assurance testing.

Applicant notes that *Hellerstein* does not disclose the SDS server testing the software package, or otherwise performing independent quality assurance testing. Rather, the Examiner has relied on it being obvious to one having ordinary skill in the art to perform testing either as SDS 205 or where the software package was created.

The latter option is inconsistent with the allegation that the SDS is the certification entity previously recited, consequently, it appears appropriate to deal with the allegation that testing is performed at the SDS 205.

Applicant notes that testing software is vastly different from downloading software, which is a form of distribution. The machines which store and download software are not required to have the same components, processor, or functionality as the target machines in order to test the software. For example, testing software may require ensuring compatibility with different input/output devices, some of which may be unique to a target machine, hence there may be numerous versions of the various machines required in order to test the software on each possible target machine. A server is a single computer and would typically not have the spectrum of possible input/output devices that would have to be tested. A specific example includes the control of a power outlet typically found on a set top box (to which a TV may be plugged into). How would a server test the control of an attached AC outlet since servers typically to not have AC outlets that are controlled by the processor?

The alleged motivation is based on “to ensure that there is no defects are presented in software package before released it [sic].” Applicant notes that many computer retailers

distribute software (e.g., selling compact discs) but there is not expectation that they would test the software that they are distributing or certify it.

The Office Action further alleges that “software package itself can be considered as a certification or its description can also be considered as a certification for operation in a target machine.” Applicant submits that considering a software package itself to be considered as a certification totally negates the meaning of “certification.” Further, the mere existence of a software package does not mean it is not a counterfeit or bug free, or operates correctly.

Applicant has recited claim limitations pertaining to “certification” and merely considering the software itself as “certified” tramples on the inventive concepts claimed herein. As far as the descriptors disclosed in *Hellerstein*, those do not disclose “certification” as an option and it is inappropriate to read in this option.

Applicant notes that *Hellerstein* does not disclose the various claim limitations found in claim 1, and therefore claim 1 is should be viewed as patentable over *Hellerstein*.

## Claim 2

Claim 2 recites “wherein certifying the host software file for operation in a host comprises certifying the host software file for execution on a host associated with a specific host manufacturer and a model associated with the specific host manufacturer.”

The Office Action alleges that this limitation is disclosed by *Hellerstein* “After receiving a package, the region server (RS) determines if each of the end point machines (the potential targets) has an appropriate amount of resources (CPU, RAM, disk space, swap space, etc.). Additional checks performed are: (i) determine if a target (202 in FIG. 2) has an appropriate version of the (correct) operating system; and (ii) determine if target has appropriate pre-requisites (i.e., are the required services present).” Namely, the Examiner alleges that “it certifies the software package for executing on a specific target machine 202 by making sure that the target machine has a correct operating system and

an appropriate amount of resources (each machine model has different amount of resources).”

Applicant has noted and references the previous statements that identifying resources on a target machine is not the same as identifying the manufacturer and model of the manufacturer. Nevertheless, certifying software for execution on a machine involves more than determining whether the resources requires to execute the program are present. Certification of software involves verifying that the program does what is supposed to do, which require the necessary resources, but that alone does not complete the certification process. For example, simply because a software program requires a certain amount of memory does not mean that the program will properly run on a target system, and that the program is error free.

Thus, *Hellerstein* does not disclose the above reference nor render it obvious. Because the allegation is that *Hellerstein* discloses the limitation (e.g., which is associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

### Claim 3

Claim 3 recites in part “wherein the data processing system is operated by the certification entity or the host software manufacturer.” In response, the Office Action states *Hellerstein* discloses the method in col. 7, line 62, which states “...pre-requisite list) is entered in the service distribution server....” The Office Action further states that “SDS 205 can be a data processing system or a data processing system is built in SDS 205.”

Applicant submits that the cited text in *Hellerstein* does not disclose the claim limitation as all it indicates is that the software package is loaded into the SDS server. Further, the statement that the SDS can be a data processing system does not relate to

whether the SDS (presuming it does have a data processing system) is operated by the certification entity or the host software manufacturer.

Thus, *Hellerstein* does not disclose the above reference nor render it obvious. Because the allegation is that *Hellerstein* discloses the limitation (e.g., which is associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

#### Claim 4

Claim 4 recites in part “wherein the host software includes at least one of a host protocol file, host data file, host profile file, service data file, or host configuration message set file.” The Office Action alleges that *Hellerstein* discloses the limitation in conjunction with column 7, lines 60-62, which pertain to the software package descriptors. Applicant submits that *Hellerstein* does not disclose any of these limitations, as none of the words “host protocol file, host data file, host profile file, service data file, or host configuration message set file” are found in the referenced text, nor are any synonymous concepts found. It is not clear to the Applicant which one of these is terms is alleged to disclosed the claim limitations.

Thus, *Hellerstein* does not disclose the above reference nor render it obvious. Because the allegation is that *Hellerstein* discloses the limitation (e.g., which is associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

#### Claim 5

Claim 5 recites in part “wherein the host data file contains software objects for execution in the host.” The Office Action alleges this limitation is disclosed by

*Hellerstein* at column 4, lines 32-34, which state: “A software package is a unit of physical containment for a collection of software components forming a service or an end-user application.”

Applicant first questions whether “a unit of physical containment” associated with a software package does not refer instead to something akin to a shrink-wrapped package containing a compact disc? That is, a “unit of physical containment” for software appears to be some sort of media or packaging of media. Nonetheless, software objects, which are known in the art as a construct of programming languages, are not the same as modules, and thus is not disclosed in the cited text. The term “object” carries a distinction in the art from “a module.” Consequently, it is not clear to the Applicant how a software object is alleged to be disclosed by the software package of *Hellerstein*.

Thus, *Hellerstein* does not disclose the above reference nor render it obvious. Because the allegation is that *Hellerstein* discloses the limitation (e.g., which is associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

#### Claim 6

Claim 6 recites in part “wherein the host profile file indicates one of a plurality of resources incorporated in the host, wherein at least one of the resources processes digital video signals.” The Office Action alleges that *Hellerstein* discloses this limitation at column 8, lines 33-34, which states (including the context language): “After receiving a package, the region server determines if each of the end point machines (the potential targets) has an appropriate amount of resources (CPU, RAM, disk space, swap space, etc.).” The Office Action further alleges that “one of ordinary skill in the art would recognize that CPU can process digital video signals.”

Applicant submits that a CPU of a computer typically does not process digital video signals (this is typically performed by a DSP or digital signal processing chip). There is no disclosure in *Hellerstein* that the target machines have resources for processing video signals. The Examiner is conjecturing that this is the case. Further, the mere statement that it would have been within the ordinary skill of the art is not sufficient to establish a prima facie case of obviousness (see, e.g., MPEP 2143.01, IV).

Thus, *Hellerstein* does not disclose the above reference nor render it obvious. Because the allegation is that *Hellerstein* discloses the limitation (e.g., which is associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

#### Claim 7

Claim 7 recites in part “wherein the host profile file is used to create a user-interface in a configuration message set creation system that determines at least one host configuration message.” The Office Action states that “one of ordinary skill in the art would be been motivated to create a user interface based on the description file because it would allow the user/administrator to select the services, resources, and version, the software package is required for specific target machine.”

Applicant submit that *Hellerstein* does not disclose a “host profile file.” The specification indicates that the host profile file describes the capabilities of the specific type of host (par. 124). *Hellerstein* does not disclose a file describing the capabilities of a specific type of host. At most, *Hellerstein* discloses maintaining a file for each target machine, which is not the same as a “type of host.”

Consequently, because *Hellerstein* does not disclose a “host profile file”, it would not be possible for one of ordinary skill in the art to create a user interface.

#### Claim 8

Claim 8 recites in part “authenticating the data processing system to the host file database prior to transferring the host software file.” The Office Action states it would have been obvious to one having ordinary skill in the art to do this based on the motivation that “including authenticating step while connecting to the database to ensure that SDS 205 is the right SDS 205 in order to protect the database from accessing or writing to it.”

The motivation to perform this is not based on any problem disclosed in *Hellerstein* that was identified and that should be solved. Further, *Hellerstein* discloses a single SDS system (in contrast to a plurality of regional servers). Consequently, given that there is only one SDS system, it is unclear why there were be any reason to ensure it was the ‘right’ one. Applicant submits that a prima-facie case of obviousness has not been established, and that there is no objective motivation stated for the conclusionary statement provided.

#### Claim 9

Claim 9 recites in part “authenticating the host file data base to the enhanced services system prior to transferring the host software to the host file database.” The Office Action states that it would have been obvious to one skilled in the art “to recognize that when SDS 205 establishes a connection to the database in global software repository, it must check to make sure it connection to the right database.” [sic.]

The motivation to perform this is not based on any problem disclosed in *Hellerstein* that was identified and that should be solved. Further, *Hellerstein* discloses a single SDS system (in contrast to a plurality of regional servers) and a single global software repository. Consequently, given that there is only one SDS system and one global software repository, it is unclear why there were be any reason to ensure it (e.g., the global software repository) was the ‘right’ one. Applicant submits that a prima-facie case of obviousness has not been established, and that there is no objective motivation stated for the conclusionary statement provided.

Claim 10

Claim 10 recites in part “recording an indication in the host file database of the transfer of the host software file to the enhanced services system.” The Office Action states that this would have been obvious to one of ordinary skill in the art at the time the invention was made to recognize that at the end of every transaction, there should be a confirmation to indicated whether a successful or failure transaction.” [sic]

Applicant notes the claim limitation is not merely recognizing an indication of a confirmation of the successful transaction, but “recording an indication in the host file database of the transfer.” Applicant notes that these are two different things. For example, every time a customer purchases goods at a store using a credit card, the customer will receive an indication of whether the transaction was successful or not. This is different from recording an indication in a database of the transaction. It is possible to confirm the transfer of a file between two computers without recording an indication of the transfer.

Thus, Applicant submits that a prima-facie case of obviousness has not been established, and requests the rejection to be withdrawn.

Claim 11

Claim 11 recites in part “recording a second indication in the host file database of the receipt of the host software file from the data processing system.” The Office Action states that this is disclosed in *Hellerstein*, which states “determined if software package is already present in the global software repository, That is, the system checks whether this is a new package.” The Examiner adds that “Therefore, the software package itself is an indication or it must stored an indication in the global software repository to indicate that the software package is already presented in database in order to check for a new arrival of software package.” [sic]

Applicant notes that checking whether a software package obtained is already stored in the global software repository does not anticipate the limitation of “recording a second indication in the host file database of the receipt of the host software file from the data processing system.”



The claim requires “recording an indication”, and there is no disclosure of that occurring in the cited text. The existence of a software package is not the same a recording an indication that the package is already in the database.

Thus, *Hellerstein* does not disclose the above reference nor render it obvious. Because the allegation is that *Hellerstein* discloses the limitation (e.g., which is associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

#### Claim 12

Claim 12 recites in part “maintaining an enhanced services system communication file comprising an address associated with the enhanced services system, communication parameters for use in transferring the host software file to the enhanced services system, and authentication data associated with the enhanced services system.” The Office Action alleges this is disclosed in *Hellerstein*. Namely, that the limitation of “communication parameters for using in transferring the host software file to the enhanced services system” is disclosed by the statement “client software can only be installed if appropriate server is available (determined from enterprise service repository 208).” Further, that the limitation of “authentication data associated with the enhanced services system” is disclosed by the statement “the services that are available in a region.”

Applicant notes that determining whether a server is available does not indicate what communication parameters are to be used. Availability (or status indication) and communication parameters are two separate concepts, and not synonymous. Applicant requests further elaboration regarding evidence that these would be considered the same. Similarly, “authentication data” is not mentioned in the cited phrase, and is not disclosed by *Hellerstein*. A statement “services are available in a regions” states nothing related to “authentication”, verification, or any other similar or every remotely related concept.

Thus, *Hellerstein* does not disclose the above reference nor render it obvious. Because the allegation is that *Hellerstein* discloses the limitation (e.g., which is associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

#### Claim 13

Claim 13 recites in part “wherein the step of establishing a second connection from the host file database to the enhanced services system comprises establishing a second connection from the host file database to the enhanced services system using the communication parameters maintained in the communication file.” The Office Action states that *Hellerstein* discloses this when it states: “client software can only be installed if appropriate server is available (determine from enterprise service repository 208).”

Applicant notes that there is not disclosure of “communication parameters,” nor any disclosure of using such parameters “maintained in the communication file.”

Thus, *Hellerstein* does not disclose the above reference nor render it obvious. Because the allegation is that *Hellerstein* discloses the limitation (e.g., which is associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

#### Claim 14

Claim 14 recites:

A method of downloading software, comprising:

- producing host software by a host software manufacturer to control a host;
- providing the host software to a certification entity;

receiving a certification indication from the certification entity indicating the host software is compatible with the host;

establishing a connection from a first data processing system to a second data processing system, the second data processing system comprising a database for storing host software to be downloaded to a host;

authenticating the first data processing system to the second the data processing system; transferring a copy of the host software comprising an host protocol file and a host profile file to the second data processing system; and

receiving a confirmation indication from the second data processing system of the receipt of the host software.”

The claim recites in part “providing the host software to a certification entity.” The Office Action alleges that *Hellerstein* discloses a certification entity, which is disclosed as the Service Distribution Server. As Applicant has previously demonstrated, there is no disclosure in *Hellerstein* of the SDS performing any certification related functions.

The claim also recites “receiving a certification indication from the certification entity indicating the host software is compatible with the host.” The Office Action alleges this is disclosed by *Hellerstein* by the statement “introduce new software package (SP) and its description (e.g., service, role, software name, version, resource pre-requisite list, service pre-requisite list) is entered in the Service Distribution Server of SDS 205.” Applicant notes that the description of a file does not mention “certification indication” and Examiner has not alleged which description attribute discloses the limitation. Further, recall that *Hellerstein* states that the Regional Server “customizes” the software package. (Col. 2, lined 39). Thus, it is not even possible for the SDS server to even certify that that the software package is compatible with the host, when the Regional Server will be modifying the code.

The claim also recites “transferring a copy of the host software comprising a host protocol file and a host profile file.” The Office Action alleges this limitation is disclosed by *Hellerstein* by the statement “software package is stored in the global software repository 206.”

Applicant notes that all *Hellerstein* discloses in the cited text is a “software package.” The claim recites a “host software comprising a host protocol file and a host profile file.” Yet there is no disclosure of these limitations, and the Office Action simply glosses over these limitations.

The claim also recites in part “authenticating the first data processing system to the second data processing system.” The Office Action alleges that this limitation is obvious to one skilled in the art.

The motivation to perform this is not based on any problem disclosed in *Hellerstein* that was identified and that should be solved. Applicant submits that a prima-facie case of obviousness has not been established, and that there is no objective motivation stated for the conclusionary statement provided.

#### Claim 15

Claim 15 recites in part “wherein the host protocol file comprises at least one host specific protocol message used by an enhanced services server to interact with the host.” The Office Action alleges this limitation is disclosed by *Hellerstein* by the statement “message content may include: service name, package name, ‘override’ flag, package binary.”

Applicant notes that the cited text references information conveyed between the SDS and the RS (regional server). Applicant presumes that the Examiner is analogizing the SDS with the enhanced services server and the RS with the host. The analogy is inappropriate. First, the claim recites a “specific protocol message used by an enhanced services server to interact with the host.” The host is the final recipient of the software, and that is not the RS as alleged by the Examiner. The Examiner is trying to read messages between the SDS and the RS as the same as messages between the enhanced services server and the host.

Thus, applicant submits the recited limitations are not disclosed by *Hellerstein* as alleged.

Claim 16

Claim 16 recites in part “wherein the host profile file indicates a host type comprising a specific host manufacturer and a model associated with the specific host manufacturer.” The Office Action alleges this is disclosed by *Hellerstein* by the statement “description file (e.g., service, role, software name, version, resource pre-requisite list, service pre-requisite list)” as well as “resources (CPU, RAM, disk,...”).

Applicant has noted that “host manufacturer and a model” is not disclosed in *Hellerstein* at all, and the “description file” references does not anticipate the recited limitation. The indication of resources of a target machine required by a software package does not indicate the host manufacturer, or a model thereof of the target machine.

Thus, *Hellerstein* does not disclose the above reference nor render it obvious. Because the allegation is that *Hellerstein* discloses the limitation (e.g., which is associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

Claim 17

Claim 17 recites in part “wherein the host protocol file contains a version number associated with the host protocol file.” The Office Action alleges this is disclosed by *Hellerstein* by the statement “description file (e.g., service, role, software name, version, resource pre-requisite list, service pre-requisite list).”

Applicant concedes that the cited text does recite the word “version.” However, the context in which it is cited is relevant and further analysis shows that this does not anticipate the claim limitation. First of all, the Examiner is inserting words from that quoted from *Hellerstein*. The cited text actually discloses “A new SP [software package] and its description (e.g., ... version...) is entered in the service distribution server or SDS.” (Col. 7, lines 59-63.) There is no “description file” recited. Nonetheless, the “description” modifies the “software package.”

Namely, there is a “software package” and “a description of the software package.” The “version” refers to the version of the software package. The Examiner states “this file can be a host protocol file.”

Assuming that the “description” is embodied as a separate file, which the Examiner alleges to be the host protocol file, the claim recites a “version number associated with the host protocol file.” Namely, the version number indicates the version of the host protocol file. *Hellerstein* discloses the version number pertains to the software package, not to the so-called ‘description file.’

Thus, *Hellerstein* does not disclose the above reference nor render it obvious. Because the allegation is that *Hellerstein* discloses the limitation (e.g., which is associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

#### Claim 18

Claim 18 recites in part “wherein the certification indication includes an identification associated with the host, the identification further associated with a specific host manufacturer and a model of the specific host manufacturer.” The Office Action alleges that *Hellerstein* discloses these limitations the following statement “determine if each of the end point machines (the potential targets) has an appropriate amount of resources (CPU, RAM, disk space, swap space, etc.). Determine if a target 202 has an appropriate version of the correct operating system pre-requisites (i.e., are the required services present).” The Examiner alleges that “it certifies the software package for executing on a specific target machine 202 by making sure that the target machine 202 has a correct operating system and an appropriate amount of resources (each model has different amount of resources.)).

Applicant notes the reference text of *Hellerstein* does not use the word “certification” or any other concept that can remotely be equated with certification. Applicant has previously

indicated why indication of resources requires by a software package does not indicate a particular model of the host executing the software package. Applicant further notes that the Examiner has stated, without any basis, that “each model has different amount of resources.” It is unclear on what basis the Examiner has made this statement. Nevertheless, even if different models have different resources, that would not indicate which one is which model. That is similar to asking identification of an automobile by indicating that it has eight, not six, cylinders in the engine. Which car is it? It cannot be ascertained.

Thus, *Hellerstein* does not disclose the above reference nor render it obvious. Because the allegation is that *Hellerstein* discloses the limitation (e.g., which is associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

#### Claim 19

Claim 19 recites “wherein the host file database records a date and time of receipt of the host software, the certification indication, and the confirmation indication.” The Office Action alleges the “certification indication” is disclosed by *Hellerstein*, as is the “confirmation indication,” but relies upon one of ordinary skill in the art for the “date and time” limitation.

Applicant notes that *Hellerstein* does not use the words “certification indication” or any other concept synonymous thereto. The Office Action alleges that somehow the “certification indication” is found in the accompanying information, such as software and hardware dependencies. However, these are not the same as “certification indications” as recited therein.

Applicant further disagrees with the Examiner’s conclusion that “exit code” (e.g., “Exit from algorithm with proper exit code.” (Col. 9, lines 44) The referenced text says nothing at all about “records...the confirmation indication.”

Thus, *Hellerstein* does not disclose the above reference nor render it obvious. Because the allegation is that *Hellerstein* discloses the limitation (e.g., which is

associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

#### Claim 20

Claim 20 has recites “where the host software file contains software objects capable of being executed in a consumer electronics host wherein the consumer electronics host processes digital multi-media signals.” The Office Action alleges that this is disclosed by *Hellerstein*, but yet relies upon one of ordinary skill in the art to recognize that a CPU is capable of processing digital multi-media signals. Applicant disagrees and references the prior comments made regarding “software objects.”

Applicant submits that the claim 20 is patentable over *Hellerstein* by virtue of incorporating the limitations of the claims it depends upon.

Because the allegation is that *Hellerstein* discloses the limitation (e.g., which is associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

#### Claim 21

Claim 21 recites in part “identifying an enhanced services system to receive the host software.” The Examiner alleges this is disclosed by *Hellerstein* by way of the “regional servers.”

Applicant submits that claim 21 is patentable at least for the reason that it incorporates the limitations recited in the independent claim it depends from.



#### Claim 22

Claim 22 recites in part “where the step of transferring the host software to the enhanced services system further includes transferring a copy of the certification indication.” The Office Action states that *Hellerstein* discloses the above limitation, but does not cite any text from *Hellerstein*, and states “when SDS 205 transfer software package to the region, it also include in the software package the certification indication in order for the region to determine which target machines have an appropriate resource requires by software package.” [sic]

Applicant respectfully disagrees with the Examiner’s conclusionary statement, which for all practical purposes appears to be making a totally unsupported assertion, and does not cite any text for the alleged operation of *Hellerstein*.

Because the allegation is that *Hellerstein* discloses the limitation (e.g., which is associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

#### Claim 23

Independent claim 23 recites in part “the host software file for configuring a host.” The Office Action alleges this is disclosed in *Hellerstein* by the “software package” limitation, namely, “extracts the package from the global software repository and distributes the package to the region.”

Applicant notes that downloading software to a host is not the same as configuring the host. Software may be a service, or it may perform other functions. It may also, as in the recited claim, be used to configure the host. However, there is no disclosure cited in *Hellerstein* of downloading software for that purpose. In addition, the cited text from *Hellerstein* pertains to downloading the software to the regional server, not at the target machine.

Independent claim 23 also recites in part “authenticating the host file database to the enhanced service system using in part the set of communication parameters.” The Office Action

alleges that this is obvious in light of one skilled in the art, but this is not a problem identified by *Hellerstein* as requiring a solution, so it is not clear on what basis one skilled in the art would have been motivated to develop this.

Independent claim 23 also recites in part “maintaining a second list of the destination address associated with the set of communication parameters, the set of communication parameters including authentication information.” The Office Action alleges this is disclosed in *Hellerstein* by the statement “client software can only be installed if appropriate server is available (determine from enterprise service repository 208)”.

Applicant notes the cited text says nothing pertaining to communication parameters, nor anything regarding authentication information. Consequently, Applicant submits the claim is not anticipated or rendered obvious by *Hellerstein*.

Independent claim 23 also recites in part “recording an indication of the confirmation of the receipt of the host software file...” Applicant has addressed this aspect before, and reiterates past comments on this point.

#### Claim 24

Claim 24 recites in part “recording an indication in the second database regarding the software downloaded to the host.” The Office Action alleges this limitation is disclosed in *Hellerstein* by the statement “updateable flag”.

Applicant submits that the “updateable flag” disclosed in *Hellerstein* only indicates whether a software package should be downloaded. It does not perform the step of “recording an indication” regarding the software which has been downloaded to the host.

Because the allegation is that *Hellerstein* discloses the limitation (e.g., which is associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

Claim 25

Claim 25 is argued to be patentable based on the limitations found in the independent claim from which it depends from.

Claim 26

Claim 26 recites in part “transmitting an indication of certification of the host software file; and verifying in the enhanced services system that the indication of certification has been received prior to transmitting a copy of the host software to the host.” The Office Action alleges this is disclosed in *Hellerstein* by the statement that “This package is then transported to the region. Typical message content may include service name, package name, ‘override’ flag, package binary” and the statements by the Examiner:

- 1) “the software package itself can be considered an indication of certification or any of the message content can be an indication” and
- 2) “it is inherent in order for RS 203 to perform verification on the environment of the machine 202.”

Applicant notes that the text cited by the Examiner does not disclose any text disclosing “certification” or any related concept. Applicant submits that the Examiner is reading limitations in the disclosure that simply are not disclosed in *Hellerstein*. Further, Applicant submits that there is no inherency in verifying the regional service (analogized to be the enhanced services system) in order to ascertain the target system’s environment. Applicant requests the Examiner to provide support for this statement.

Because the allegation is that *Hellerstein* discloses the limitation, or it is inherent, (e.g., which are associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

Claim 27

Claim 27 is argued to be patentable based on incorporating the limitations from the independent claim it depends on.

Claim 28

Claim 28 recites in part “wherein the host software file comprises at least one from the group of host protocol file, host profile file, host data file, and host configuration message set file.” The Office Action states this is disclosed in *Hellerstein* by the statement “description file (e.g., service, role, software name, version, resource pre-requisite list, service pre-requisite list.)”

Applicant first notes that the Examiner is misquoting *Hellerstein*, as the word “file” is not present in the cited text. Applicant submits that Examiner has not indicated in any specificity regarding which one of the group is alleged to be disclosed by the cited text. Consequently, Applicant submits that since the actual words in the claim language is not present, the Examiner has not made a sufficiently detailed case to response to each combination. Applicant submits that “description” information about a software file is not a host protocol file, a host profile file, a host data file, or a host configuration message set.

Claim 29

Claim 29 is argued to be patentable based on incorporating the limitations from the independent claim it depends on.

Claim 30

Claim 30 recites in part “wherein the host software file contains messages for interacting with a host associated with a specific host manufacturer and a model of the specific host manufacturer.” The Office Action alleges this is disclosed by *Hellerstein* by the statement “message content may include: service name, package name, ‘override’ flag, package binary”.

Applicant submits that the cited text from *Hellerstein* does not disclose any information pertaining to “a host associated with a specific manufacturer and a model of the specific host manufacturer” or any synonymous concepts.

Because the allegation is that *Hellerstein* discloses the limitation, or it is inherent, (e.g., which are associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

#### Claim 31

Claim 31 recites in part “receiving a host software file associated with a specific host manufacturer and a model associated with the specific host manufacturer.” The Office Action alleges this is disclosed by *Hellerstein* by the statement “introduce new software package (SP) and its description (e.g., service, role, software name, version, resource pre-requisite list, service pre-requisite list) is entered in the Service Distribution Server or SDS 205.”

Applicant notes the cited text does not disclose the words “a specific host manufacturer and a model associated with the specific host manufacturer” or any concept that is synonymous. Applicant submits that *Hellerstein* does not disclose the recited limitation.

Claim 31 also recites limitations directed to “authenticated the enhances services system” and “recording an indication of the date and time,” which Applicant has previously addressed and incorporates by reference. These concepts are not explicitly or inherently disclosed by *Hellerstein*.

#### Claim 32

Claim 32 has been amended to use consistent terminology, and recites in part “where the host software comprises a host protocol ~~module~~ file and a host profile file.” Applicant directs the Examiner to previous comments made regarding the host protocol file and host profile file.

Claim 33

Claim 33 is argued to be patentable based on incorporating the limitations from the independent claim it depends on.

Claim 34

Claim 34 recites in part “retrieving a file associated an enhanced services system with a plurality of host types, each host type comprising a specific host manufacturer identifier and a model identifier associated with the specific host manufacturer” The Office Action alleges that this is disclosed in *Hellerstein* by the following statements “retrieval of target roles”, “a role repository 204 maintains information such as service, role, associated software package, and updateable flag”, as well as “each of the end point machine (the potential targets) has an appropriate amount of resources (CPU, RAM, disk space, swap space, etc.” and the Examiner’s statement that “each machine model has different amount of resources.”

Applicant incorporates by references the prior comments directed to why *Hellerstein* does not disclose “a specific host manufacturer identifier and a model identifier associated with the specific host manufacturer.”

Further, Applicant notes to the Examiner that this limitation recites a file that associates the enhanced services system with various host types. This limitation, if analogized to what the Applicant understands the Examiner’s presumption, is that there would have to be a file associating the regional servers to specific host types. Since there are no “host types” disclosed in *Hellerstein*, this limitation can’t be found in *Hellerstein*. The only database available to the regional servers is the role repository, which does not disclose host types, but resources associated with the hosts.

Applicant submits that a *prima-facie* case of obviousness has not been made, and therefore the rejection should be withdrawn.

Claim 35

Claim 35 recites in part “wherein the host software file is tested for operation on a specific host manufacturer and host manufacturer’s model. The Office Action states “It is inherent in *Hellerstein*’s approach. The software package must be tested for operation on a specific target machine and model before it release.” [sic]

Applicant notes that Examiner has not provided any basis as to why this is inherent in *Hellerstein*. Why could not software be distributed without testing? Is it impossible? Does commercially available software have to be tested on every single model of computer before a manufacturer releases the software? The answer is no. The Examiner is simply making a blanket assertion without support, and defies common knowledge, namely that software can be distributed without testing on a specific target machine and model before the software released.

Claim 36

Applicant’s previous comments regarding these same limitation, including “recording an indication” apply as well.

Claim 41

Claim 41 recites in part “loading a host protocol file associated with a type of host” and “loading a host profile file associated with the type of host.” The Office Action alleges that the host protocol file is disclosed in *Hellerstein* by the statement: “a new software package and its description (e.g., service, role, software name, version, resource pre-requisite list, service ore-requisite list) is entered in the service distribution server” and further in light of the Examiner’s assertion that the “description file includes host protocol file because it stores information about configuration settings, hardware driver, software,...”

Applicant respectfully submits that the limitations recited above are not disclosed in the “description” text cited from *Hellerstein*, which provides information about the software

package, and Applicant further references prior comments regarding these limitations. The “description” provides information about the software package, and does not provide a “host protocol file” or a “host profile file associated with the type of host.” Descriptors about a software package simply are not the same as information used to communicate with a host (e.g., host protocol file). Applicant submits that the limitations asserted as disclosed by *Hellerstein* are being read into the disclosure of *Hellerstein* without any basis.

Claim 41 also recites “using the protocol file and the at least one service related parameter to generate a host configuration message.” The Office Action alleges that this is disclosed by *Hellerstein* by the statement “message may include: service name, package name, override flag, package binary.”

Applicant notes that the context of the message is with respect to communication from the SDS to the regional server. There is no context of transmitting the “message” to a target host, let alone of generating a “host configuration message.”

It should be apparent that *Hellerstein* does not disclose the limitations alleged to be disclosed, and further, the reliance by the Examiner that one skilled in the art would find it obvious is not based on any problem identified in the prior art reference as requiring a solution.

Consequently, Applicant submits that claim 41 is non-obvious over *Hellerstein* and the rejection should be withdrawn.

#### Claims 42 and 43

Claim 42 recites in part “wherein the host configuration message is a statically created configuration message.” Claim 43 recites in part “wherein the host configuration message is a dynamically created configuration message. The Office Action alleges that *Hellerstein* discloses a “statically created configuration message” and that it would be obvious to dynamically create configuration message.

Applicant submits that the cited text does not distinguish between a “statically” or “dynamically” created configuration message, and that reliance on the ordinary skill of the art is



not premised on any objective basis. Further, if *Hellerstein* allegedly teaches a “static” message, then why would one in the art then deviate from that process? The reason provided by the Examiner “to create the message dynamically whenever it need one” [sic] is not suggested as problem to be solved by the prior art in *Hellerstein*.

The disclosure of *Hellerstein* is also void of any suggestion that the SDS creates any configuration messages for the target system, which is the result if the elements are analogized in the manner suggested. The SDS merely stores software to be downloaded, and does not “customize” anything. Thus, it is inappropriate to suggest that *Hellerstein* teaches any generation of any type of message to configure a host that is sent by the SDS.

Applicant submits that claims 42 and 43 recite limitations not disclosed in *Hellerstein*, and that the rejection should be withdrawn.

#### Claim 44

Claim 44 recites in part “wherein the type of host is associated with a host manufacture and a model of the host manufacturer.” The Office Action alleges this is disclosed by *Hellerstein* and asserts that “each type target machine has different type of resources and is associated with a machine manufacturer and each model has different type resources for a specific target machine. That is why region performs determination to find out which target machine matches with software package’s description.”

Applicant notes that the Examiner has not cited any text in *Hellerstein*, but is characterizing the disclosure of *Hellerstein* based on the Examiner’s conclusions, not on what *Hellerstein* discloses.

Applicant can readily provide an example, where software can be downloaded onto a target PC, in a region comprising various target PCs. The software may require a certain operating system version, a certain memory requirement, and so forth. However, once these requirements are verified, the software could be downloaded, without knowing whether the target computer was a DELL® or COMPAQ® computer. Further, the software could be

downloaded without knowing whether it was DELL D600® or DELL D800® model. In this example, the fact that the target is a particular target type and a particular model of a specific manufacturer is not pertinent to the system disclosed in *Hellerstein*. However, in the present invention, the “type of host” and “a host manufacturer and a model of the host manufacturer” is relevant.

Applicant submits that *Hellerstein* does not disclose the recited limitations. Because the allegation is that *Hellerstein* discloses the limitation, or it is inherent, (e.g., which are associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

#### Claim 45

Claim 45 recites in part “wherein the host protocol file comprises a plurality of protocol messages associated with the type of host.” The Office Action states “It is inherent because *Hellerstein*’s system as plurality of target machines.” [sic]

Applicant notes that there is no basis of inherency as provided by the Examiner, and therefore the allegation is unsupported. Applicant notes that a plurality of target machines cannot be equated to a “the type of host”, because the plurality of target machines can be all of one type or of several types. Further, a protocol message as used in the present invention, is a message used to facilitate communication with the host, which is not the same as a downloadable software command that is executed in the host as part of an application.

Applicant submits that *Hellerstein* does not disclose the recite limitations. Because the allegation is that *Hellerstein* discloses the limitation, or it is inherent, (e.g., which are associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

Claim 46

Claim 46 recites in part “wherein the host profile file contains a list of capabilities associated with the type of host.” The Office Action alleges that this is disclosed in *Hellerstein* based on the statement “description (e.g., ... resource pre-requisite list,...) and “resources (CPU, RAM, disk space, swap space, etc.)”

Applicant submits that there is a distinction between “capabilities” and “resources.” A capability is the ability to provide a service or function, which may use resources, but the presence of a resource does not imply that the capability is present. For example, the specification discusses service capabilities (e.g., par. 23). These may use various resources (including for example, a CPU). But, the mere presence of a CPU in a host does not mean it has the service capability. Further, the “description” recited in *Hellerstein* refers to requirements associated with the software package, and does not describe the resources present in a particular target host.

Thus, Applicant submits the prior art reference does not disclose the recited limitation. Because the allegation is that *Hellerstein* discloses the limitation, or it is inherent, (e.g., which are associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

Claim 47

Claim 47 recites in part “wherein storing the host configuration message comprises storing the configuration message in a file in an enhanced services system.” Applicant has amended the claim to correct an antecedent basis rejection. The Office Action alleges that “the message must stored in a file before transmitted to region server.” [sic]

Applicant presumes that Examiner is arguing that this is inherent in the disclosure of *Hellerstein*. First of all, it is not entirely clear what is “the message” referenced by the Examiner. *Hellerstein*’s disclosure on that aspects of a “message” is succinct in its description.

Assuming, *arguedo*, that this refers to the description of the software file, there is no reason why it could not be created in the SDS and then spooled out as it is created, and transmitted to the regional server. In this manner, the SDS would not be storing any file. Without further support as to its inherency, Applicant submits the rejection is improper.

Thus, Applicant submits the prior art reference does not disclose the recited limitation. Because the allegation is that *Hellerstein* discloses the limitation, or it is inherent, (e.g., which are associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

#### Claim 48

Claim 48 recites in part “wherein the configuration message is an executable command on a processor in the host.” The Office Action alleges that “it is inherent in order to perform installation on the target machine.”

Applicant submits the rejection is improper, as the Examiner has not provided a basis for the inherency. The “configuration message” is a command executed on “the host.” The disclosure of *Hellerstein* pertains to downloading software on the host. While software inherently comprises ‘commands’ executed on a processor, one skilled in the art would recognize that a software package is not the same as a “configuration message” which is akin to a protocol management message. A configuration message is sent to configure some settable aspect of a system, which is not the same as executing application software. If the Examiner considers these to be inherently the same, then some objective evidence that all software that is downloaded to a processor must always comprise a “configuration message.” If this is not the case, then it is not inherent in *Hellerstein*, that downloading software is the same as sending a configuration message to a processor.

Thus, Applicant submits the prior art reference does not disclose the recited limitation. Because the allegation is that *Hellerstein* discloses the limitation, or it is inherent, (e.g., which

are associated with anticipation), and a case of obviousness has not been explicitly stated, Applicant submits that a proper case of obviousness under 35 U.S.C. 103 has not been established and the rejection should be withdrawn.

#### Claim 37

Claim 37 recites in part “communicating a software module associated with a brand and model of a consumer electronics host device to a host file database.” The Office Action alleges that this limitation is disclosed in *Hellerstein* by the statement “introduce new software package (SP) and its description (e.g., service, role, software name, version, resource pre-requisite list, service pre-requisite list) is entered in the service distribution server 205 and are stored in the global software respository 206.”

Applicant submits that the cited text does not disclose the terms or synonymous concepts of “a brand and model of a consumer electronics host device.” The cited text discloses a description of a software package, not of a consumer electronics host. These are not the same.

The claim also recites in part “detecting activation of a host...” The Office Action states that this is disclosed in *Hellerstein* by the statement “determine if each of the end point machines (the potential targets) has an appropriate amount of resources (CPU, RAM, disk space, swap space, etc.) Determine if the a target has an appropriate version of the (correct) operating system. Determine if the target has appropriate pre-requisites (i.e., are the required services present).”

Applicant submits that the cited text form *Hellerstein* does not disclose “detecting activation of a host.” The cited text does not disclose “activation” or any other synonymous action. The ability to determine resources in a target machine is not the same as detecting its activation. Those are separate functions, and not interchangeable.

Claim 38 recites in part “wherein detecting activation of a host is initiated by the receipt of a message from a host transmitted in a two-way cable network.” The Office Action alleges that this is disclosed in *Hellerstein* by the statement “may be connected to computer system 110

through network 120 and may exchange data, information and instruction with computer system 110.”

Applicant note that the cited text is from Weinmann, not *Hellerstein*. Further, it is appropriate to discuss the full context of the cited passage. The text pertains to Figure 1, and shows that computer system 110, which is the system that may be used to automatically send the software updates (col. 3, lines 1-3). The cited text states that “[o]ther systems such as a computer system, similar to the system shown in Fig. 1, may be connected to computer system 110 through network 120 and may exchange data, information and instructions with computer system 110.”

Applicant interprets this text as merely disclosing that computers may communicate with other computer systems via a network. There is nothing disclosed in this text pertaining to “activation” of a host, nor the “detecting” of such an activation. Nor is there is any indication that the detection “is initiated by the receipt of a message from a host transmitted in a two-way cable network.” The Examiner is reading in limitations that simply are not disclosed by the prior art.

#### Claim 39

Claim 39 recites in part “recording in an enhanced services server an indication associated with transmitting the software module from the server to the host.” The Office Action alleges this is disclosed by the text in *Hellerstein* of “updateable flag.”

Applicant notes that the cited text does not disclose the concept of “recording...an indication associated with transmitting the software module...” but merely cites that an indication is referenced to determine whether downloading can occur. These are not the same concepts. The former indicates whether a software module has been transferred, while the latter is used to determine whether downloading can occur.

Claim 40

Dependent claim 40 is patentable based on the limitations incorporated from the independent claim from which it depends on.

Claim 51

Claim 51 has been amended to recite “a cable distribution network operatively connected to the enhanced service system at a headend of the cable distribution network capable of receiving the host software file from the enhanced services system.” Support for this can be found, at least in Figure 23.

Applicant notes that the Weinmann reference does not disclose the system downloading software “operatively connected to the enhanced services system at the headend of the cable distribution network.” The disclosure of Weinmann discloses that the computer may incorporate a communication card (see Wienmann, figure 1) which implies connected to a cable network in the traditional manner, which would correspond to a user of the cable system.

Claim 52

Claim 52 has been amended to recite “a cable distribution network having a headend, operatively connected to the enhanced services system at the headend, capable of receiving the host file from the enhanced services system and transmitting the host software file to a host associated with the host address.”

The disclosure of Weinmann discloses that the computer may incorporate a communication card (see Wienmann, figure 1) which implies connected to a cable network in the traditional manner, which would correspond to a user of the cable system.

Claim 53

Claim 53 discloses “wherein the database further stores a host type associated with the host software file, the host type comprising a host manufacturer identifier and a model identifier of the host manufacturer.” The Office Action alleges that this is disclosed by *Hellerstein* by the statement “a database with their configuration settings” and the assertion by the Examiner that “the configuration file identifies what type (model) of target machine is required for the software package.”

Applicant notes the Examiner is citing text referencing the regional server that maintains information regarding resources requires to support a software package by the target systems, including potentially configuration settings. Applicant submits that maintaining information about resources is not the same as the maintaining a “host manufacturer identifier and a model identifier of the host manufacturer.” Applicant references the arguments previously presented regarding this point.

Claim 54

Claim 54 is patentable by virtue of depending from claim 52 and incorporating the limitations therein. Applicant further notes that the reference cited in Weinmann references the connection of the computer downloading the software, not the target machine (or host).

Claim 55

Claim 55 is patentable by virtue of dependent from claim 52 and incorporate the limitations therein.



Claim 56

Claim 56 recites “wherein the cable distribution network is a one-way communication network.” The Office Action alleges that this is disclosed by Weinmann since “it is inherent since one way communication is part of two way communication.”

Applicant respectfully disagrees with the Examiner. One-way communication is not inherent, nor a part of two-way communication. One-way communication is just that and can be embodied in broadcasting. Cable networks implementing one-way communication cannot rely on two-way communication for data transfer, and rely on different techniques including carouselling data to cable hosts.

Claim 57

Claim 57 recites in part “wherein the database further stores an indication of the host software file transmitted to the host.” The Office Action alleges this is disclosed in *Hellerstein* the phrase “updateable flag.” Applicant refers to the prior comments as to why this is deficient with respect to disclosing this limitation.

Claim 58

Claim 58 recites in part “the host software file containing an indication of certification for operation in the host.” The Office Action alleges that this is disclosed in *Hellerstein* based on the Examiner’s assertion that “the software package itself can be an indication of certification or its description file can also be an indication for operation in the target machine.”

Applicant incorporates prior comments regarding this aspect, and adds another analogy as to why the Examiner’s allegation is incorrect. It is well known that ‘counterfeit’ software packages are available. Neither the mere existence of the counterfeit software package or a description of the software package is proof that the software package has been certified for use in a computer. If so, the whole concept of “certifying” would be rendered moot. The

Examiner's argument is essentially that the presence of the software package means that it is certified – e.g., it could not be counterfeit, and that it could not have operational bugs in the programming. This does not stand up to common sense.

Claim 58 also recites in part the limitation “means for communicating the host software file from the server to the host using a cable distribution network.” The corresponding structure involves a server connected to a cable headend transmitting the file from the server to a host. Weinmann does not disclose the server downloading the software connected to a cable headend.

### Summary

Applicant notes that several distinctions have been identified between *Hellerstein* and the present invention. *Hellerstein* does not disclose several recited limitations, including “certification”, “host type”, “host manufacturer identifier” or “host model identifier.” The attempt to read this into the text disclosed by *Hellerstein* is incorrect, as *Hellerstein* does not disclose these function or any function that is remotely synonymous. Further, it is not inherent for *Hellerstein* to perform these functions in the actions disclosed. *Hellerstein* allows solves the problems it addresses without requiring reading these limitations into the disclosure. The Examiner is extrapolating and adding to what *Hellerstein* discloses based on the Examiner's own knowledge. “All the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Without doing so, anticipation or obviousness has not been established. (MPEP 2143.03.)

Further, in many cases, the Examiner has merely stated the limitations recites would be obvious to one skilled in the art, without detailing what level of skill that would be based upon and what basis one skilled in the art would know how and why to provide the function associated with the additional limitations. Using this approach, no invention would be novel, as it could be argued that anyone skilled in the art would have been motivated to define an improvement based on the prior art because the improvement offers benefits as defined by the improvement.

“Obviousness can only be established or modifying the teachings of the prior art to produce the claim invention where there is some teaching, suggestion, or motivation to do so.” “The teaching, suggestion, or motivation must be found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. ‘The test for an implicitly showing is what the combined teaching, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.’ *In re Kotzab*, 217 F.3d 1365, 1370.” (MPEP 2143.01) Specifically, Applicant notes that the Examiner has not identified what the problem was to be solved by each prior art, and how that would have resulted in rendering the limitation obvious.

Applicant presumes that Examiner has conducted a thorough search and that “the examiner need not ordinarily make a second search of the prior art, unless necessitated by amendments to the claims by the application in the first reply...” (MPEP 904). Applicant submits that the amendments to the claims herein are not of the nature that requires searching additional art. (Applicant is attempting to avoid any protracted “wack-a-mole” prosecution and conclude prosecution in a timely manner.)

### **Conclusion**

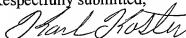
Applicant appreciates the thorough response provided by the Examiner. Applicant notes, however, that none of the art cited discloses several of the limitations recited in the claims as discussed above. Applicant considers the present response as complete and addressing all of the claim rejections. Applicant respectfully submits the rejection for all claims be withdrawn, and that all claims be placed in a condition of allowance.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required

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therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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